IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE

In re:	)	
	)	
	)	
SENTINEL TRUST COMPANY	)	No. 4781
	)	

Objections of Danny N. Bates, et al., to Motion of Commissioner and Receiver for Approval of Transfer of Sentinel's Fiduciary Positions

These objections are made by Danny N. Bates, Clifton T. Bates, Howard H. Cochran, Bradley S. Lancaster, and Gary L. O'Brien, in their capacities as duly-elected and serving Directors of Sentinel Trust Company, Danny N. Bates, who owns most and controls all outstanding stock in the said corporation, and by Sentinel Trust Company itself (to such extent as Sentinel's directors may retain authority to defend it against its attempted destruction by the Tennessee Commissioner of Financial Institutions), all hereinafter collectively referred to as "Respondents," and make the objections set out below to the aforementioned motion noticed for hearing for November 15, 2004:

1. Before stating the reasons for their objections, Respondents make the following factual allegations as to their standing to object, and to assure that essential facts will be in the record of proceedings in this court:

(a) The record herein shows that Respondents have previously appeared before this Court by the undersigned attorney as an attorney representing Sentinel Trust Company (hereinafter, "Sentinel") in its defensive status as a corporation created under charter granted by the State of Tennessee, whose creation and existence were not conditioned upon any approval or grant of permission by the Tennessee Commissioner of Financial

Institutions (hereinafter, Commissioner), to make this Court aware of the legal position of Sentinel, through its Board of Directors, of their defensive positions taken in denial of the lawful existence of the powers claimed by the Commissioner. Such past involvement includes: *(i)* Appearances and argument made by undersigned counsel, identified on the transcripts of proceedings as counsel for "Sentinel Trust Company" in hearings held by the Court on June 30, 2004 and July 12, 2004, *(ii)* their filing as an exhibit a copy of a petition for *Certiorari* and *Supersedeas* filed in the Davidson County Chancery Court, *Sentinel Trust Co., et al. v. Lavender,* Civil Action No. 04-1934-I, as shown by the June 30, 2004 transcript, *(iii)* Respondents informed the Court that the writ of *certiorari* was issued by the Davidson County Chancery Court on July 1, 2004, and as shown by the transcripts, *(iv)* during the course of argument on those hearings in this court, the undersigned attorney took the position for his clients herein, and the Attorney-General stated the Commissioner's agreement with such position, that jurisdiction to determine the legal question of whether the Commissioner was vested with such powers of seizure, receivership imposition, and liquidation, was vested in the Davidson County Chancery Court in the pending *certiorati* case therein.

(b) Subsequent developments included *(i)* an expedited hearing before the Davidson County Chancery Court upon Respondents' application for *supersedeas* to terminate the Commissioner's actions taken to achieve liquidation of Sentinel, after which that court, by memorandum opinion, denied the application for that writ; *(ii)* followed by these parties' filing an application for modification or alternatively for a discretionary appeal upon the contention that the Chancery Court's memorandum opinion affirmatively proved that the Court refused to apply the Tennessee law of statutory construction in arriving at its stated acceptance of the Commissioner's opinion; then *(iii)* the Chancery Court made an order granting the discretionary appeal from its interlocutory order denying the writ, after which *(iv)* these parties filed a prompt application asking the Tennessee Court of Appeals to accept the interlocutory appeal, *Sentinel Trust Co., et al. v. Lavender,*

Commissioner, No. M2004-02068-COA-R10-CV, but *(v)* before the arrival of the time for the Attorney-General to respond to such filing, the Tennessee Court of Appeals *sua sponte* issued its order on September 1, 2004, rejecting the interlocutory appeal for the stated reason that ". . . we cannot conclude that an interlocutory appeal is necessary to prevent irreparable harm or to prevent needless, expensive and protracted litigation."

(c) Such actions by the Davidson County Chancery Court and by the Tennessee Court of Appeals that the denial of the writ of *supersedeas* and the refusal to accept the discretionary appeal constituted holdings and recognition that the Chancery Court's denial was interlocutory, as a matter of law, and was subject to modification by that Court at any time before its final disposition of all issues as to all parties in its decision upon the merits of its review of the Commissioner's actions pursuant to the writ of *certiorari,* still awaiting hearing. With the Commissioner pushing with all deliberate speed toward total liquidation and destruction of Sentinel as a corporation, conceded by the Attorney-General in argument in the Chancery Court to be an objective of his actions against Sentinel, such course poses a real threat that despite the contention that the Commissioner's actions herein have been illegal and without authority, the probable consequence, if the Commissioner shall achieve his objectives, will be that the destruction of Sentinel as a corporation might render *certiorari* as a remedy moot, as occurred in *Boyce v. Williams, Commissioner of Insurance and Banking,* 215 Tenn. 704, 713, 389 S.W.2d 272, 276 (1965), leaving the victim without legal remedy under Tennessee law despite the holding of the Supreme Court of Tennessee that the Insurance Commissioner's destructive exercise of power was illegal because the statutes did not vest him with such power.

(d) As a consequence of the denial of immediate protection to Respondents by such actions of Tennessee trial and appellate courts, Respondents were advised that judicial protection might be available from the Federal courts on the theory that such actions by Tennessee officials violated provisions of the Constitution of the United States as well as

the Constitution of Tennessee, and they accordingly filed a protective action in the United States District Court for the Middle District of Tennessee, *Sentinel Trust Co., et al. v Lavender, Commissioner,* No. 3-04-0836. So that this Court's records may fully show the status of such litigation, copies of some of the filings therein are exhibited hereto, but without the exhibits filed therewith in the United States District Court. Such filings include these Respondents' Complaint for Injunctive Relief **(Exhibit A),** their Brief re: Temporary Restraining Order **(Exhibit B),** the Attorney-General's response to their request for injunctive relief **(Exhibit C),** Respondents' Reply brief re: T.R.O.**(Exhibit D),** the Attorney-General's Motion to Dismiss the case **(Exhibit E),** Respondents' Motion for Oral Argument on said Motion to Dismiss **(Exhibit F),** their Response to the Motion to Dismiss **(Exhibit G),** and their Brief in Opposition to the Motion to Dismiss **(Exhibit H).**

(e) No orders have been entered by the U. S. District Court in the above-referenced pending civil action at this time, except for an order setting all motions for hearing on the morning of December 2, 2004. As a consequence, civil actions are presently pending in the courts of first resort of both the State of Tennessee and the United States which, if and when there shall be final decision on the merits, will be appealable by either party as of right.

(f) Hence, at this time, such pending actions could result in appellate determinations within either the Tennessee or the United States judicial systems upon Respondent's contentions which have been made in good faith and with support in past authoritative appellate decisions, including, *inter alia:* **First,** That the Commissioner is not lawfully vested with the powers he has claimed and effectively exercised over Sentinel, as a "trust company" and not a bank, when such powers, including bank examination, bank seizure and operation though a receiver appointed by himself, and bank liquidation, by the literal terms of the Tennessee Banking Act, these powers are described as powers pertaining to actions that may be taken against "banks." **Second,** although the Tennessee law of

statutory construction is quite clear (as summarized, **Exhibit B,** pp. 5-6), it is insisted in both the Chancery and Federal filings **(Exhibit A,** ¶ 22(c)–(e) and **Exhibit H,** p. 2, first paragraph), that the Chancery Court, in its interlocutory denial of relief, affirmatively proved that it did not apply the Tennessee law of statutory construction, but merely accepted the Attorney-General's contention without legal rationale recognizable as part of any body of Tennessee law. **Third,** that the Commissioner was egregiously mistaken in his assumptions that he was vested with emergency powers of seizure and liquidation without prior hearing because *(i)* the statute purports to so empower him only to protect the interests of "depositors" and Sentinel, as a trust company rather than a bank, has never had any depositors, and that his insistence essentially that Sentinel had become insolvent was not rationally sustainable because he treated an **asset** (Sentinel's "overdraft" claims, *in its fiduciary capacity* against defaulted bond-issuers) as a Sentinel **liability,** and *(ii)* there was in fact no basis for pretending Sentinel was insolvent **(Exhibit A,** ¶¶ 12, 17, and referenced supporting affidavit, **Exhibit I** hereto).

2. The first reason for denial of the motion is that the jurisdiction stated to be conferred on the chancery court in the county which is the situs of a "bank" seized for liquidation by the Commissioner, as defined by T.C.A. § 45-2-1504 are primarily the specific powers to give or withhold approval, during liquidation of a "state bank," of sale of bank assets or compromise of claims owned by it in excess of $500, or payment of claims against the bank before the Commissioner files a schedule with the court under T.C.A. § 45-2-1504(a), and to determine the validity of objections made by any "creditor, depositor or stockholder" to rulings made by the Commissioner on claims made against the bank under T.C.A. § 45-2-1504(g). The obligation and power of the Commissioner to "take the necessary steps to terminate all fiduciary positions held by the state bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts . . ." is imposed upon the Commissioner alone by T.C.A. § 45-2-1504(c), without any statement of a requirement of court approval and without any language empowering the Court to grant or withhold the approval of such terminations and

surrenders of fiduciary positions. Under recognized Tennessee decisions, whenever a statute empowers a court to take one of a series of particular judicial actions, actions beyond the scope of the express statutory empowerment are beyond the court's jurisdiction and legally void, *even if* entered by consent of all parties, and even after the passage of many years from the apparent closing of the case, *City of Bluff City v. Morrell,* 764 S.W.2d 200 (Tenn., 1988); *Brown v. Brown,* 198 Tenn. 600; 281 S.W.2d 492 (1955). Hence, this Court has no jurisdiction to rule upon whether the proposed transfers should be approved or disapproved, so that it should overrule the motion for lack of subject-matter jurisdiction.

3. As shown by the Bates affidavit filed herewith **(Exhibit J),** the value of such accounts to Sentinel, if allowed to resume business as a trust company rather than a bank, are planned to be essentially gifts of streams of future income to favored banks, totaling $4,506,158.93 to SunTrust and $2,706,344.90 to Bank of Oklahoma, or a grand total of $7,212,503.83 in what should be Sentinel's future income but for the Commissioner's seizure of Sentinel. The transfer of Sentinel's accounts to new trustees is a forfeiture of its future income, not a transfer of its property, because when a fiduciary corporation is placed under government control due to insolvency, its fiduciary accounts are not its property but are instead the property of the trust settlors and/or beneficiaries, and not subject to such insolvency trustee's powers to liquidate under recognized decisions, *Caplin, Trustee, v. Marine Midland Grace Trust Co.,* 406 U.S. 416, 92 S.Ct. 1678, 32 L.Ed.2d 195 (1972); *Wagner, Trustee v. Citizens' Bank & Trust Co.,* 122 Tenn. 164, 122 S.W. 245 (1909). Nor is there any statute purporting to give this Court or the Commissioner the power to appoint substitute trustees or paying agents, so as to bring such arguably within this Court's subject-matter jurisdiction.

4. As shown by the sworn allegations in the pleadings in the pending case in the U. S. District Court for the Middle District of Tennessee, and by the "Whisenant affidavit" **(Exhibit I),** the alleged and assumed balance of "Accounts Receivable" vastly overstates (by more than double) the actual "borrowings" from the General Trust Fund, the amounts subsequently received under the —as Respondents contend—unauthorized "receivership" herein, as reported to this Court, with fees

due Sentinel on the computer register of checks to be issued, should be more than enough to recover the full amount allegedly "borrowed" from the pooled funds of the solvent bond issues, so that the transfer of those accounts is legally and equitably unjustifiable, the sale of Sentinel's building is unwarranted, and the continuation of the Commissioner's possession is unwarranted, even if his statutory power over banks may be judicially or administratively re-written to become a body of such powers over a non-depository trust company.

5. Despite the fact that attorneys for Respondents and for the Attorney-General have maintained that whether the Commissioner is legally and constitutionally empowered to take the destructive liquidating action against a non-depository trust company under statutory provisions whose language purport to empower him to take such actions only against state banks, Respondents recognize that this Court conceivably may decide that it is authorized or even obligated to rule upon such issue on the following basis: The only basis for any claim that this Court is authorized to exercise the T.C.A. § 45-2-1504 powers, and thereby granted jurisdiction, is by assuming that the Tennessee Banking Act empowers the Commissioner to exercise those explicit bank-controlling powers over a trust company; and it is recognized that this Court may conclude that it is authorized to adjudicate the issue in the absence of any final adjudication by either Court to which it has been submitted, on the familiar theory that every court is empowered, in the first instance, to rule upon the extent of its own jurisdiction. Should the Court so determine, Respondents submit it should conclude that Sentinel was not subject to these powers for the following reasons:

(a) The Commissioner's position that "state bank" includes "trust company" in provisions giving him examination, seizure, and liquidation powers is contrary to modern statutory drafting methodology, in which the scope of substantive statutory provisions is determined by overriding definitions applicable to the entire statute,[1] which was followed

[1]Employment-related laws are the most common example, in which "employer" is restricted to mean only employers with a minimum number of employees, as in the workmen's compensation laws, and in many federal statutes, such as the family medical leave laws, which restrict "employer" to an employer employing more than 50 employees working within 75 miles

in the Tennessee Banking Act, both pre- and post-1999, with both "bank" and "trust company" being defined in mutually-exclusive terms, T.C.A. § 45-1-103.

(b) Such conclusion is inconsistent with the definitions themselves, in which the Legislature specifically defined "bank" as including two types of non-bank companies "for the purposes of supervision, examination and liquidation," T.C.A. § 45-1-103(3), and the Legislature could most conveniently add "trust company" to the list of companies included in the term "bank" if such had been its intent.

(c) The assumption that "bank" includes "trust company" is inconsistent—and would render pointless—the provision of T.C.A. § 45-2-1001(c)(1), which provides that "bank" includes "trust company" for the purposes of T.C.A. §§ 45-2-1001–45-2-1006 .

(d) The assumption that "bank" includes "trust company" is inconsistent for the purpose of subjecting every trust company to every bank-regulatory power is with a provision inserted by the 1999 Act, T.C.A. § 45-1-124(h), which expressly empowers the Commissioner to exercise his bank-examination powers against trust companies only for the limited period of July 1, 1999 through June 30, 2002, which completely disproves the Commissioner's self-aggrandizing assumption that he can exercise each of his bank-related powers over non-banks subject to his regulatory authority.

The foregoing pin-point ways in which the commissioner's assumptions designed to support his intent to destroy Sentinel are not conclusions, but are totally contrary to the provisions of the Tennessee Banking Act as determined by actual application of the canons of statutory construction as providing the rationale for determining the statute's meaning.

WHEREFORE, Respondents respectfully insist that the Commissioner's motion should be denied, leaving the Commissioner free to exercise his own judgment, at his own peril, as to what

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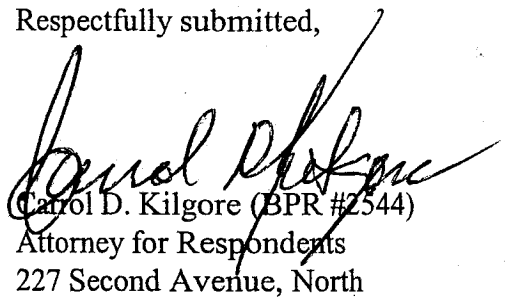
action he is authorized or required to do with regard to his fictitious assumption that "bank" includes "trust company" with regard to the objectives he is determined to achieve.

Respectfully submitted,



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